

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IK HEE YU,

Plaintiff,

**ANSWER**

-against-

08 CV 1308 (AKH)(AJP)

THE CITY OF NEW YORK; POLICE OFFICER  
VINCENT BAVARO, Shield No. 01633; JOHN  
DOES; RICHARD ROES,

JURY TRIAL DEMANDED

ECF CASE

Defendants.

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Defendants City of New York (“City”) and Police Officer Vincent Bavaro, by their attorney, Michael A. Cardozo, Corporation Counsel for the City of New York, for their answer to the Complaint, respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. Deny the allegations contained in paragraph 1 of the Complaint, except admit that plaintiff purports to bring this action as stated therein.

**JURISDICTION**

2. Deny the allegations contained in paragraph 2 of the Complaint, except admit that plaintiff purports to invoke the jurisdiction of this Court.

3. Deny the allegations set forth in paragraph 3 of the Complaint, except admit that plaintiff purports to invoke the supplemental jurisdiction of this Court.

**JURY TRIAL DEMANDED**

4. No response is required to plaintiff's jury demand as set forth in paragraph 4 of the Complaint.

**VENUE**

5. Deny the allegations contained in paragraph 5 of the Complaint, except admit that plaintiff purports to lay venue in this District.

**NOTICE OF CLAIM**

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Complaint, except admit that a document purporting to be a Notice of Claim was received by the Comptroller's Office on February 7, 2007, and that those claims have not been settled.

**PARTIES**

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Defendants deny the allegations set forth in Paragraph 8 of the Complaint, except admit that the City of New York is a municipal corporation duly organized and operating under the laws of the State of New York and respectfully refer the Court to the appropriate enabling statute and the related laws of the State and City of New York for their content and meaning as to its responsibilities.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint, except admit that on November 11, 2006, defendant Bavaro was employed by the City of New York as police officer.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint.

**STATEMENT OF FACTS**

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint.

12. Deny the knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Complaint.

15. Deny the allegations set forth in paragraph 14 of the Complaint.<sup>1</sup>

16. Deny the allegations set forth in paragraph 15 of the Complaint.

17. Deny the allegations set forth in paragraph 16 of the Complaint.

18. Deny the allegations set forth in paragraph 17 of the Complaint.

19. Deny the allegations set forth in paragraph 18 of the Complaint.

20. Deny the allegations set forth in paragraph 19 of the Complaint.

21. Deny the allegations set forth in paragraph 20 of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint.

23. Deny the allegations set forth in paragraph 22 of the Complaint.

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<sup>1</sup> Plaintiff incorrectly numbers paragraph 14 twice.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of the Complaint.

**FIRST CLAIM**

**DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION  
AND 42 U.S.C. § 1983**

25. Defendants repeat and reallege their responses to paragraphs 1-23 of the Complaint as if fully set forth herein.

26. Deny the allegations set forth in paragraph 25 of the Complaint.

27. Deny the allegations set forth in paragraph 26 of the Complaint.

**SECOND CLAIM**

**SUPERVISORY LIABILITY FOR DEPRIVATION OF RIGHTS UNDER THE  
UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983**

28. Defendants repeat and reallege their responses to paragraphs 1-26 of the Complaint as if fully set forth herein.

29. Deny the allegations set forth in paragraph 28 of the Complaint.

30. Deny the allegations set forth in paragraph 29 of the Complaint.

**THIRD CLAIM**

**LIABILITY OF THE CITY OF NEW YORK FOR CONSTITUTIONAL VIOLATIONS**

31. Defendants repeat and reallege their responses to paragraphs 1-29 of the Complaint as if fully set forth herein.

32. Deny the allegations set forth in paragraph 31 of the Complaint.

33. Deny the allegations set forth in paragraph 32 of the Complaint.

34. Deny the allegations set forth in paragraph 33 of the Complaint.

35. Deny the allegations set forth in paragraph 34 of the Complaint.

36. Deny the allegations set forth in paragraph 35 of the Complaint.

**FOURTH CLAIM**

**RESPONDEAT SUPERIOR LIABILITY OF THE CITY OF NEW YORK  
FOR STATE LAW VIOLATIONS**

37. Defendants repeat and reallege their responses to paragraphs 1-35 of the Complaint as if fully set forth herein.

38. Deny the allegations set forth in paragraph 37 of the Complaint.

39. Deny the allegations set forth in paragraph 38 of the Complaint.

**FIFTH CLAIM**

**ASSAULT AND BATTERY**

40. Defendants repeat and reallege their responses to paragraphs 1-38 of the Complaint as if fully set forth herein.

41. Deny the allegations set forth in paragraph 40 of the Complaint.

42. Deny the allegations set forth in paragraph 41 of the Complaint.

**SIXTH CLAIM**

**FALSE ARREST and FALSE IMPRISONMENT**

43. Defendants repeat and reallege their responses to paragraphs 1-41 of the Complaint as if fully set forth herein.

44. Deny the allegations set forth in paragraph 43 of the Complaint.

45. Deny the allegations set forth in paragraph 44 of the Complaint.

**SEVENTH CLAIM**

**ABUSE OF PROCESS**

46. Defendants repeat and reallege their responses to paragraphs 1-44 of the Complaint as if fully set forth herein.

47. Deny the allegations set forth in paragraph 46 of the Complaint.

48. Deny the allegations set forth in paragraph 47 of the Complaint.

**EIGHTH CLAIM**

**MALICIOUS PROSECUTION**

49. Defendants repeat and reallege their responses to paragraphs 1-47 of the Complaint as if fully set forth herein.

50. Deny the allegations set forth in paragraph 49 of the Complaint.

51. Deny the allegations set forth in paragraph 50 of the Complaint.

**NINTH CLAIM**

**VIOLATION OF AND RETALIATION FOR THE EXERCISE OF RIGHTS  
TO FREE SPEECH**

52. Defendants repeat and reallege their responses to paragraphs 1-50 of the Complaint as if fully set forth herein.

53. Deny the allegations set forth in paragraph 52 of the Complaint.

54. Deny the allegations set forth in paragraph 53 of the Complaint.

**TENTH CLAIM**

**INTENTIONAL and NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

55. Defendants repeat and reallege their responses to paragraphs 1-53 of the Complaint as if fully set forth herein.

56. Deny the allegations set forth in paragraph 55 of the Complaint.

57. Deny the allegations set forth in paragraph 56 of the Complaint.

**ELEVENTH CLAIM**

**VIOLATION OF RIGHT TO EQUAL PROTECTION OF LAW**

58. Defendants repeat and reallege their responses to paragraphs 1-56 of the Complaint as if fully set forth herein.

59. Deny the allegations set forth in paragraph 58 of the Complaint.

60. Deny the allegations set forth in paragraph 59 of the Complaint.

**TWELFTH CLAIM**

**NEGLIGENCE**

61. Defendants repeat and reallege their responses to paragraphs 1-59 of the Complaint as if fully set forth herein.

62. Deny the allegations set forth in paragraph 61 of the Complaint.

63. Deny the allegations set forth in paragraph 62 of the Complaint.

**THIRTEENTH CLAIM**

**NEGLIGENT HIRING, SCREENING, RETENTION, SUPERVISION AND TRAINING**

64. Defendants repeat and reallege their responses to paragraphs 1-62 of the Complaint as if fully set forth herein.

65. Deny the allegations set forth in paragraph 64 of the Complaint.

66. Deny the allegations set forth in paragraph 65 of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

103. The Complaint fails in whole or in part to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

104. There was probable cause plaintiff's arrest, detention, and/or prosecution.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

105. Any and all injuries alleged in the Complaint were caused, in whole or in part, by the culpable, negligent, or intervening conduct of plaintiff and/or third parties, and were not the proximate result of any act of defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

107. The individual defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known, and therefore, are entitled to qualified immunity.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

108. Punitive damages are not recoverable against the City of New York.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

110. Defendants have not violated any rights, privileges or immunities secured to the plaintiff under the Constitution, the laws of the United States, the laws of the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.



**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

111. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

112. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, defendant City is entitled to governmental immunity from liability.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

113. To the extent defendants used any force it was reasonable, necessary, and justified to accomplish their official duties and to protect their own physical safety and the physical safety of others.

WHEREFORE, defendants request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
April 27, 2008

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By: /s/ Hugh A. Zuber  
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